IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.604 OF 2006
IN
CRIMINAL APPEAL NO.553 OF 2006

Subhash Hariram Rajbhar & Ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

Shri Aniket Vagal i/by Anjali Patil for the Applicants.

Shri D.P.Adsule, A.P.P for the Respondent.

CORAM : A. S. OKA, J.

DATE : DECEMBER 21, 2006.

P.C.:

1. Heard the Advocate appearing for the Applicants and the learned A.P.P for the State. The Applicants have been convicted of offences punishable under section 399 and 402 of the Indian Penal Code. The maximum substantive sentence is five years rigorous imprisonment.

2. When this Application was placed before the court on 13th October, 2006, time was granted to learned A.P.P to take instructions as regards criminal antecedents of the Applicants. On 19th October, 2006 a report dated 17th October, 2006 signed by the Senior Inspector of Police Kurar Police Station, Mumbai was shown to the court in which there was a reference to

cases pending against the Applicants.

3. Paragraph Nos.1 to 3 of order dated 29th November, 2006 passed by this court read thus:

> "1. This Application was placed before this Court on 13th October, 2006. The Application was adjourned to enable the learned A.P.p to take instructions as regards the criminal antecedents of the Applicants. On 19th October, 2006, when the Application was called out a report dated 17th October, 2006 signed by the Senior Inspector of Police, Kurar Police Station, Mumbai was shown to the Court in which a reference was made to C.R.NO.174 of 2005 registered against the Applicants at Goregaon Police Station, Mumbai, C.R.No.52 of 2005 registered at Dindoshi Police Station and C.R.No.10 of 2005 registered at Navsari Police Station. On the basis of the said report, this Court passed an order on 19th October, 2006 which reads thus:
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> > ". The learned A.P.P pointed out that there are other serious cases pending against the Applicants. The

learned Advocate for the Applicants states that in most of the said cases the Applicants have been acquitted.

. The learned A.P.P to take instructions on this aspect. Stand over till 13th November, 2006".

2. Today the learned Advocate appearing for the Applicants has produced certified copy of the remand report submitted on 14th September, 2005 by the Police Officer of Goregaon Police Station in which a request was made for discharging the certain accused persons in C.R.No.174 of 2005. In the said C.R., the Applicants Nos.1,2,4 and 5 have been shown as Accused. A prayer was made for discharging the Applicant No.2, Applicant No.4, and Applicant No.5 who are accused Nos.2 to 4 in the said C.R. Accordingly, an order was passed on the same day. The learned Advocate for the Applicants has produced certified copy of the charge sheet in C.R.No.10 of 2005 of Navsari Police Station which according to the learned Advocate for the Applicants shows that none

of the Applicants have been shown as accused. The learned Advocate for the Applicants has produced certified copy of the Judgment and order dated 19th April, 2006 in Sessions Case No.989 of 2005 which shows that the Applicants have been acquitted in the case registered under C.R.No.52 of 2005 by Dindoshi Police Station.

3. The reports are submitted by the Police Officers to the concerned Public Prosecutor with a view to enable the Public Prosecutor to point out the correct factual position before the court. When the concerned officer after making enquiry noted that the aforesaid offences have been registered against the Applicants, he should have also pointed out in the report the subsequent orders which are referred to above. The submission of such reports to the Public Prosecutor in which material facts are suppressed amounts to misleading the Public Prosecutor. This is the third instance I have noticed where material facts have been suppressed by a Police Officer while submitting report to the Public Prosecutor".

4. One Shri Jitendra Koli, Assistant Police Inspector has filed an affidavit. He has stated he was not informed about the status of the cases which were referred to in his report. He stated that he prepared the report from his computer file. He admitted that he did not verify the status of the cases. He has tendered conditional apology to this court. The apology is accepted.

5. Shri S.R. Borulkar, the learned Public Prosecutor appeared in this Application on the last date and he has stated that now a circular has been issued by the office of the Director General of Police, Maharashtra State laying down the guide-lines for furnishing antecedents of the accused persons by the Investigating Officers while submitting reports to the Public Prosecutor. The circular contains a prescribed format. The prescribed format provides for C.R number and sections of the statute, the date of arrest, date of discharge, the date of conviction and date of acquittal. The circular records that while furnishing information to the Public Prosecutor, High Court the information will have to be given in the format contained in the circular. A xerox copy of the circular is taken on record and marked ‘X’ for

identification. It is expected that the circular will be implemented so that the Public Prosecutors will get factually correct instructions which can be conveniently placed before the court.

6. The circular provides that the same will apply while giving instructions to the Public Prosecutor, High Court. It is desirable that while furnishing antecedents of the accused to the prosecutors in all other courts in Maharashtra, the same format should be adopted by the concerned police officers so that the concerned prosecutors get accurate information which can be placed before the concerned court. The learned Public Prosecutor will bring this aspect to the notice of the concerned authority.

7. I have heard the submissions of the Advocates appearing for the parties. It is pointed out that the Applicants are in jail from 11th August, 2005. The learned Advocate for the Applicants has invited my attention to the notes of evidence. It is submitted that the identification of the weapon is doubtful. It is submitted that the entire evidence is sketchy and a serious doubt is created about the truthfulness of the version of the prosecution witnesses.

8. After having considered the submissions and after considering the gravity of offence and material on record, I find that no case is made out for enlarging the Applicants on bail as of today.

7. Hence, I pass the following order:

(i) Application for bail is rejected. Hearing of the Appeal is expedited. Liberty to file private paper-book.

(ii) As the Applicants are in custody from 11th August, 2005, if the Appeal is not heard within a period of six months from the date on which paper-book is ready, liberty to the Applicants to apply afresh for grant of bail.

(iii) Copy of this order will be forwarded by the learned Public Prosecutor to the concerned police authorities.

JUDGE